



Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-2191

16622

EXHIBIT NO. _____ FILED 1425

NOV 22 1989 -12 45 PM

Writer's Direct Dial Number

INTERSTATE COMMERCE COMMISSION

(804) 629-2818

November 20, 1989

Ms. Noreta R. McGee, Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue, NW
Washington, DC 20423

9-326A031

Dear Ms. McGee:

I enclose four original counterparts of the document described in paragraph (1) hereof for recordation pursuant to § 11303 of Title 49 of the U. S. Code.

In accordance with 49 CFR Part 1177 covering the recordation of documents, I advise you as follows:

- (1) The enclosed document is a Temporary User Agreement dated as of November 15, 1989 between General Motors Corporation (Electro-Motive Division), LaGrange, Illinois 60525, Bailor, and Southern Railway Company, Three Commercial Place, Norfolk, Virginia 23510-2191, Bailee.
- (2) The enclosed document is a "primary document" under 49 CFR § 1177.1.
- (3) No cross-indexing of the enclosed document is requested.
- (4) The enclosed document was executed to evidence the grant by the Bailor to the Bailee of a temporary right to the use of certain railroad equipment, being:

33 3,000 H.P. diesel-electric locomotives, bearing the Bailee's initials and road numbers 4609 through 4641, both inclusive, AAR designation B-B.

Ms. Noreta McGee
November 20, 1989
Page 2

Each Unit will be marked in letters not less than one inch in height with the words:

OWNERSHIP SUBJECT TO A SECURITY
AGREEMENT FILED WITH THE
INTERSTATE COMMERCE COMMISSION

- (5) The names and addresses of the parties to the enclosed document are shown in paragraph (1) hereof.
- (6) After recordation, the three original counterparts of the enclosed document not required by the Commission for recordation should be returned to our messenger who delivered this letter.
- (7) A short summary of the enclosed document for index use follows:

This is a Temporary User Agreement dated as of November 15, 1989, between General Motors Corporation (Electro-Motive Division), as Bailor, and Southern Railway Company, as Bailee, covering 33 diesel-electric locomotives bearing Bailee's initials and road numbers NW 4609 through NW 4641, both inclusive. ? Schedule A says "Sole"

Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,



J. Gary Lane
Senior General Attorney

JGL/w
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

11/22/89

OFFICE OF THE SECRETARY

J. Gary Lane
Senior General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/22/89 at 12:45pm and assigned recordation number(s). 16622

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

16622

RECORDATION NO _____ FILED 1435

NOV 22 1989 -12 45 PM

INTERSTATE COMMERCE COMMISSION

TEMPORARY USER AGREEMENT

Dated as of November 15, 1989

between

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

and

SOUTHERN RAILWAY COMPANY

TEMPORARY USER AGREEMENT, dated as of November 15, 1989, between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a Delaware corporation (the "Vendor"), and SOUTHERN RAILWAY COMPANY, a Virginia corporation (the "Railroad").

RECITALS

WHEREAS, Railroad desires to acquire 33 new GP59 3,000 H.P. diesel electric locomotives as further described in Schedule A hereto, to bear Railroad's road numbers SOU 4609 through 4641, both inclusive, such locomotives being hereinafter collectively called the "Equipment"; and

WHEREAS, Railroad, by Purchase Order numbered QN5D00 (the "Purchase Order"), has contracted with Vendor for the manufacture and purchase of the Equipment; and

WHEREAS, the Vendor, under the terms of the Purchase Order, is to deliver the Equipment to Railroad at Bellevue, Ohio, freight charges, if any, prepaid and included in Vendor's invoice; and

WHEREAS, inasmuch as Railroad has not yet consummated financing arrangements ("Financing Arrangements") for the acquisition of the Equipment, it is not in a position to accept delivery of the Equipment at this time; and

WHEREAS, Railroad anticipates that the Financing Arrangements will be consummated on or before March 1, 1990,

and Railroad, in order that it may take possession of and use the Equipment pending completion of the Financing Arrangements, has requested Vendor to grant Railroad temporary possession of and the right to use the Equipment pursuant to the terms of this Agreement; and

WHEREAS, Vendor is willing to grant such right to use the Equipment upon the terms and conditions hereinafter stated.

* * * * *

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the Vendor and the Railroad hereby agree as follows:

1. The Vendor will deliver the Equipment to the Railroad f.o.b. at the point or points and in accordance with the delivery schedule set forth in Schedule A hereto. The Vendor's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Vendor's reasonable control. Upon delivery of each unit of the Equipment to the Railroad, an authorized representative of the Railroad will execute and deliver to the Vendor a certificate of acceptance in the form of Schedule B hereto certifying, if such be the case, that such unit appears to have been built in accordance with the specifications therefor and acknowledging receipt of delivery thereof under this Agreement, whereupon the Railroad shall assume the responsibility and risk of loss with respect to such unit so accepted.

2. The rights of the Railroad hereunder in respect of each unit of the Equipment shall commence on the date of acceptance of such unit hereunder and end on March 1, 1990, or earlier as hereinafter provided. Title to the Equipment shall remain in the Vendor, and the Railroad's right and interest therein is and shall be solely that of possession, custody and use under this Agreement. The Railroad or any third party acquiring an interest in the Equipment by reason of a conditional sale, equipment trust or other equipment financing agreement shall not by virtue of this Agreement or the possession and use of the Equipment by the Railroad under or pursuant to this Agreement or of anything permitted to be done by the Railroad hereunder in respect of the Equipment, acquire any title to or ownership of the Equipment, or any unit thereof, and the title to or ownership of the Equipment shall remain solely in the Vendor. The terms of this Agreement (other than paragraphs 3(b), 4 and 7 hereof) shall automatically be superseded and canceled without any further action by, or notice to, any party concerned as to each unit of the Equipment by the terms of any Financing Arrangements which may include any lease, conditional sale agreement or other equipment financing agreement at the earlier to occur of (i) the payment to the Vendor of the full purchase price of such unit as defined in paragraph 3(a) hereof or (ii) the filing with the Interstate Commerce Commission of said lease, conditional sale or other equipment financing agreement, but

the terms of paragraphs 3(b), 4 and 7 and the obligations of Railroad thereunder shall survive any such cancellation and be resolved and settled as soon as practicable after any such cancellation; and following such cancellation, title to the Equipment shall remain in the Vendor until it receives the full purchase price thereof. Transfer of title to and ownership of any unit of Equipment to the Railroad or to any purchaser under the Financing Arrangements shall be effected only at the time of delivery by the Vendor of a Bill of Sale to the Railroad or such purchaser.

This "Temporary User Agreement" is a financial arrangement, under which Railroad will have custody, possession and use of the Equipment purchased from Vendor, and the risk of loss of the Equipment is on the Railroad. It is anticipated that the Railroad shall acquire beneficial ownership of the Equipment under the Financing Arrangements and at that time shall be entitled, as between Railroad and Vendor, to the Modified Accelerated Cost Recovery System (MACRS) deduction under Section 168 of the Internal Revenue Code of 1986, and the Vendor shall not be entitled to such MACRS deduction. In no event, however, shall the availability or nonavailability of such deduction affect the obligations assumed by the Railroad hereunder or under the Purchase Order.

3.(a) The initial unit price and initial total price of the Equipment are set forth in Schedule A hereto. At any time before the assignment by the Vendor of its rights under

the Purchase Order in respect of any unit of the Equipment, such initial prices shall be subject to such increase or decrease as may be agreed to by the Vendor and the Railroad, and the term "purchase price" as used herein shall mean such initial prices as so increased or decreased. If the Vendor does not receive the full purchase price of each unit of Equipment pursuant to the Financing Arrangements, the Railroad shall pay any difference between such price and the proceeds of the Financing Arrangements immediately upon demand therefor by the Vendor.

(b) The Railroad agrees to pay to the Vendor a daily user fee equal to \$415 per unit of Equipment commencing on the date of acceptance of such unit by the Railroad hereunder and ending on the day immediately preceding the date of the payment to the Vendor of the full purchase price of such unit. Such user fees in respect of each unit of the Equipment shall be due and payable to the Vendor by voucher or wire transfer mailed or sent by the Railroad from Roanoke, Virginia, within 15 days after receipt of invoices therefor.

4. The Railroad agrees that it will permit no lien of any kind to attach to the Equipment and that it will pay promptly all taxes and assessments which may accrue or be imposed upon or in respect of the Equipment by reason of or in connection with the Railroad's possession, use or operation thereof under this Agreement. The Railroad's obligations contained in this paragraph 4 shall survive the termination of this Agreement.

5. The Railroad shall, at its own expense, keep and maintain the Equipment in good order and repair at all times. The Railroad shall at its option replace or repair any component or part of any unit of the Equipment damaged or destroyed by any cause during the term hereof or promptly pay to the Vendor the full purchase price of each unit of the Equipment lost, destroyed or irreparably damaged during the term of this Agreement.

6. Prior to delivery of each unit of the Equipment to the Railroad, it will be numbered with the appropriate road number set forth in Schedule A hereto. In contemplation of subsequent delivery of the Equipment under the Financing Arrangements, the Railroad will, throughout the term of this Agreement, keep and maintain plainly, distinctly, permanently and conspicuously marked in stencil on each side of each unit of the Equipment, in letters not less than one inch in height, the following legend:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED
WITH THE INTERSTATE COMMERCE COMMISSION

In the event such lettering shall at any time during the term hereof be removed, defaced or destroyed on any unit of the Equipment, the Railroad shall cause the same to be restored or replaced. The Railroad may also cause the Equipment to be lettered "Southern Railway Company," "Norfolk Southern" or in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

7. The Railroad shall indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment or out of the possession, use and operation thereof by the Railroad during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price of the Equipment and the conveyance of the Equipment or the termination of this Agreement in any manner whatsoever.

8. The Railroad will cause this Agreement, any assignment hereof, and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of protection of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. If the Equipment is to be used upon lines of railroad in any jurisdiction outside the United States of America, the Railroad shall prior to such use, to the satisfaction of the Vendor, arrange for the filing, recording or deposit (or any similar action) of all instruments required or advisable to protect the security interest of the Vendor in the Equipment in that jurisdiction.

9.(a) Railroad and Vendor each represents and warrants that:

- (i) It is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation; is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement; and has power and authority to own its properties and carry on its business as now conducted;
- (ii) The execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene nor constitute a default under the provisions of any agreement or other instrument binding upon it, and this Agreement is a valid and binding obligation enforceable, subject to applicable insolvency, bankruptcy or moratorium laws, against it in accordance its terms;
- (iii) No governmental authorizations, approvals or exemptions are required for (a) the

execution and delivery of this Agreement
(b) the validity and enforceability hereof
or (c) the use of the Equipment hereunder
or, if any such authorizations are
required, they have been obtained, and if
any such shall hereafter be required, they
will promptly be obtained.

(b) The Railroad represents and warrants that the
rights of Vendor as herein set forth and the title of Vendor to
the Locomotives are not subject to the lien of any mortgage,
security agreement or other instrument binding upon the
Railroad.

10. Any or all of the rights, benefits or advantages
of the Vendor, including the right to receive the full purchase
price of the Equipment, may be assigned by the Vendor and
reassigned by any assignee at any time or from time to time,
provided, however, that no such assignment shall subject any
such assignee to any of the Vendor's warranty, indemnity or
obligations contained in this Agreement or the Purchase
Agreement. In the event the Vendor shall assign its rights to
receive payment for the Equipment, and the Railroad shall
receive written notice thereof from the Vendor, together with a
counterpart of such assignment stating the identity and the
post office address of the assignee, all payments thereafter to
be made by the Railroad for the Equipment or in connection
therewith shall, to the extent so assigned, be made to the

assignee against proper receipt therefor in form satisfactory to the Railroad.

In the event of any such assignment by the Vendor the rights of such assignee to receive such payments as may be assigned shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by Vendor. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad, or its successors and assigns, only against the Vendor and its successors and assigns (other than assignees of such rights, benefits or advantages assigned pursuant to this Agreement).

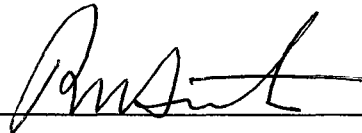
11. The Vendor agrees that, upon receipt of all payments provided to be made to it under this Agreement by the Railroad and/or under the Financing Arrangements by another party, it shall thereupon execute and deliver to or upon the order and pursuant to the instructions of the Railroad a bill or bills of sale of the Equipment in customary form with full warranty of title, free and clear of all liens, security interests and encumbrances.

12. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all rights conferred by Section 11303 of the Interstate Commerce Act.

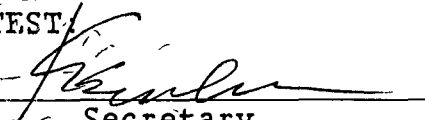
13. This Agreement, which is dated for convenience as of November 15, 1989, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument.

IN WITNESS WHEREOF, the Vendor and the Railroad have caused this instrument to be signed and acknowledged by their proper officials and their respective corporate seals to be hereunto affixed and duly attested, as of the day and year first above written.

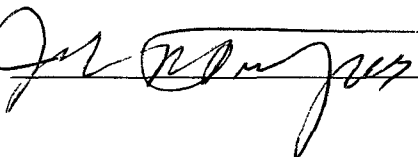
GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

By 

ATTEST:


Secretary

SOUTHERN RAILWAY COMPANY

By 

ATTEST:


Secretary

STATE OF Illinois)
COUNTY OF Cook) ss:

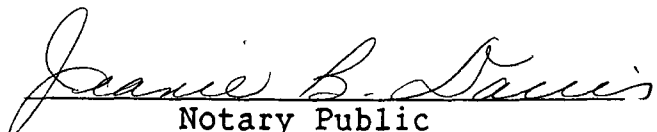
On this 20th day of November , 19 89, before me personally appeared P. M. Smith , to me personally known, who, being by me duly sworn, days that he is Asst. Divisional Comptroller of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.


Notary Public

Commission expires February 24, 1990.

COMMONWEALTH OF VIRGINIA)
CITY OF NORFOLK) ss:

On this 17th day of November , 19 89, before me personally appeared John R. Turbyfill , to me personally known, who, being by me duly sworn, days that he is Vice President Finance of SOUTHERN RAILWAY COMPANY , that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.


Notary Public

My commission expires June 16, 1991

SCHEDULE A
 to
 TEMPORARY USER AGREEMENT
 Dated as of November 15, 1989
 between
 GENERAL MOTORS CORPORATION
 (ELECTRO-MOTIVE DIVISION)
 and
 SOUTHERN RAILWAY COMPANY

<u>Type of Equipment</u>	<u>AAR Symbol</u>	<u>Plant</u>	<u>Quantity</u>
3,000 H.P. GP59 Diesel Electric Locomotives	B-B	London, Ontario, Canada (22 units)	33
		LaGrange, Illinois (11 units)	

<u>Railroad Road Numbers (both inclusive)</u>	<u>Estimated Unit Price</u>	<u>Estimated Total Price</u>	<u>Delivery</u>
SOU 4609-4641	\$1,150,000	\$37,950,000	Bellevue, Ohio in 1989 (22 units)
			Calumet Yard, Chicago, IL in 1989 (11 units)

SCHEDULE B

CERTIFICATE OF INSPECTION AND ACCEPTANCE

The undersigned, a duly authorized representative of Southern Railway Company (the "Railroad"), for the purpose of inspecting equipment that is to become subject to a Temporary User Agreement dated November 15, 1989, between the Railroad and General Motors Corporation (Electro-Motive Division) (the "Equipment Agreement"), and which is ultimately to become subject to permanent financing arrangements of the Railroad, hereby certifies that the following described unit or units of railroad equipment (the "Equipment"):

Description: GP59 3,000 H.P. Diesel Electric Locomotives

Manufacturer: General Motors Corporation (Electro-Motive
Division)

Quantity:

Road Numbers: SOU

Delivered at:

appear to be in good order and condition and to conform to the requirements and provisions of the Equipment Agreement, and have been delivered to and have been inspected and accepted on behalf of the Railroad pursuant to the Equipment Agreement as of the date indicated below.

The undersigned further certifies that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment the following legend, in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION

The execution of this certificate shall not in any way reduce, limit, alter or affect the Railroad's right to pursue any claim, in warranty or otherwise, against the Manufacturer of the Equipment for any defect, whether latent or patent, nor does it abrogate the Manufacturer's obligation to cure any non-conforming equipment which is either knowingly or unknowingly accepted hereby.

Authorized Representative of
Southern Railway Company

Dated: